UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

LORETTA JANE REEVES,	)	
	)	
Plaintiff,	)	Case No. 2:02CV00020
	)	
v.	)	**OPINION**
	)	
VIRGINIA DEPARTMENT OF CORRECTIONAL EDUCATION, ET AL.,	)	By: James P. Jones
	)	United States District Judge
	)	
	)	
Defendants.	)	

Anthony E. Collins, Wise, Virginia, for Plaintiff; Sydney E. Rab and Anthony P. Meredith, Assistant Attorneys General of Virginia, Richmond, Virginia, for Defendants.

The plaintiff in this Title VII[1] employment discrimination case has sued her state government employer and two individual supervisors, asserting that they are liable for "subjecting her to a sexually hostile work environment based on her sex and by retaliating against her for opposing such unlawful employment practices."[2] The defendants have now moved for summary judgment in their favor, contending that the claims are both procedurally barred and unsupported on the merits. The plaintiff has

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[1] Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 1994 & Supp. 2002).

[2] Compl. 1.

failed to respond to the motion within the time permitted by the Scheduling Order and therefore the defendants' motion is ripe for decision.[3]

The essential facts of the case, either undisputed or, where disputed, recited in the light most favorable to the nonmovant on the summary judgment record,[4] are as follows.

Virginia operates two maximum security prisons in Southwest Virginia, Red Onion State Prison and Wallens Ridge State Prison. The plaintiff, Loretta Jane Reeves, has been employed since 1998 by the defendant Department of Correctional Education ("DCE"). DCE, a state agency, provides educational services to inmates and has facilities in both institutions. Reeves was first employed at Wallens Ridge State Prison in a clerical position called Program Support Technician. Her supervisors were the individual defendants Mark Hutchinson, the Assistant Principal, and George Erps, the Principal.

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[3] I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process. The Motion for Summary Judgment was served by mail on December 5, 2002. Pursuant to the Scheduling Order, any response to such a motion must be filed no later than fourteen days after service of the motion. *See* Scheduling Order ¶ 6. A response was thus due no later than December 23, 2002. No response or motion for extension of time has been filed. The defendants have also filed a Motion for Dismissal for Want of Prosecution or for Default Judgment, but it is unnecessary that I rule on that motion.

[4] The defendants have submitted an affidavit of defendant Hutchinson, with exhibits, as well as excerpts from the deposition of the plaintiff. As indicated above, the plaintiff has submitted nothing.

Reeves did not get along with her immediate supervisor, Hutchinson, and filed a grievance against him under an internal grievance procedure. While the date the initial grievance was filed is not stated in the record, it was apparently shortly after July 17, 2000. On that date Reeves claims that Hutchinson was "loud, abusive and frightening" and kicked a file cabinet in her presence.[5] On September 12, 2000, Reeves was fired from DCE, apparently as a result of charges by Hutchinson that she falsified leave records and removed a memo from her supervisors' mailbox without permission.[6] She filed a grievance and was reinstated on May 7, 2001.[7] However, she did not return to work because of health problems, which she claims resulted from her treatment on the job. When she did return, in August of 2001, she worked as a Instructional Assistant at Red Onion State Prison. Her immediate supervisor at this institution was Yvonne Elswick, a teacher. Reeves only worked for a few weeks before she again went on medical leave.

On August 9, 2001, Reeves filed a charge of discrimination with the Equal Employment Opportunity Commission. In it, she asserted that Hutchinson had engaged in "a pattern of sexually harassing behavior which I found offensive and

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[5] Hutchinson Aff. Ex. 3.

[6] This date is also given in the record as October 3, 2000.

[7] This date is also given as April 27, 2001.

objected to. He called me honey, dear, girl. He told sexual jokes, made vulgar comments, and he would rub his hand toward his private [sic] in my presence."[8] She also claimed that when she had complained about Hutchinson's conduct to defendant Erps, he had told her: "He (Hutchinson) is the type of person you have to stroke to get along with. Carry his coffee to him in the morning and message his neck and shoulders. Develop a social relationship with him outside of work. Become his buddy. He is a young man, full of hormones and adrenaline, and men act like that."[9] Finally, Reeves charged that she had been discharged because she had filed a grievance complaining of Hutchinson's behavior.

The charge with the EEOC did not resolve the matter and thereafter the present action was filed.[10]

Summary judgment is appropriate when there is "no genuine issue of material fact," given the parties' burdens of proof at trial.[11] In determining whether the moving party has shown that there is no genuine issue of material fact, a court must

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[8] Hutchinson Aff. Ex. 2.

[9] *Id.*

[10] Jurisdiction of this court exists pursuant to 28 U.S.C.A. §§1331, 1343 (West 1993), and 42 U.S.C.A. § 2000e-5(f)(3) (West 1994).

[11] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c).

assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party.[12]

Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."[13] Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis."[14]

The principal argument by the defendants is that the plaintiff's claims are barred because the charge of discrimination was not timely filed with the EEOC.

As a prerequisite to a suit under Title VII, the plaintiff must file a timely charge of discrimination with the EEOC.[15] In a so-called deferral state like Virginia, the charge of discrimination must be filed within 300 days after the alleged unlawful employment practice occurred.[16] In the present case, it is clear that the conduct by

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[12] *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

[13] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

[14] *Id.* at 327.

[15] *See* 42 U.S.C.A. § 2000e-5(e)(1) (West 1994); *Nat'l R.R. Passenger Corp. v. Morgan*, 122 S. Ct. 2061, 2068 (2002).

[16] *See Tinsley v. First Union Nat'l Bank*, 155 F.3d 435, 438 (4th Cir. 1998).

Hutchinson while the plaintiff worked at Wallens Ridge State Prison, as well as her discharge, allegedly in retaliation for her complaint about such conduct, occurred more than 300 days prior to the time when she filed her EEOC charge.

It is possible for a plaintiff to sue on hostile work environment claims where conduct occurred outside of the statutory time period, "so long as any act contributing to that hostile environment takes place within the statutory time period."[17] In the present case, Reeves worked only three weeks within the statutory time period and during that time she was supervised by Yvonne Elswick and not by Hutchinson. The only claim she makes that occurred during that period of time is that Elswick "would change [her] work schedule almost daily or every other day."[18] She testified that she did not know whether that was because she was new and Elswick "was trying to work that out [or] it was being done on purpose . . . . to keep me upset. . . ."[19] While Reeves believes it was the latter, this conduct is unrelated to any of the prior claims against Hutchinson and Erps and does not constitute any adverse employment action.

For these reasons, the plaintiff's claims are procedurally barred. Moreover, even if they were not barred, they are legally insufficient to withstand summary

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[17] *Nat'l R.R. Passenger Corp.*, 122 S. Ct. at 2068.

[18] Reeves Dep. 14.

[19] *Id.*

judgment. Reeves described in detail in her deposition the conduct complained of and suffice to say none of it, singularly or in combination, is sufficiently severe or pervasive enough to support a case under Title VII.[20]

Finally, as correctly argued by the defendants Hutchinson and Erps, supervisors are not subject to individual liability for discrimination under Title VII.[21]

For the foregoing reasons, the defendants' Motion for Summary Judgment will be granted. A separate judgment consistent with this opinion will be entered forthwith.

DATED: January 9, 2003

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United States District Judge

[20] *See Ocheltree v. Scollon Productions, Inc.*, 308 F.3d 351, 356-59 (4th Cir. 2002) (reviewing cases).

[21] *See Lissau v. S. Food Serv., Inc.*, 159 F.3d 177, 181 (4th Cir. 1998).